

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

GARY LANCASTER,

CIVIL ACTION No. _____

LANCASTER,

VS.

CLASS ACTION COMPLAINT

CARNIVAL CORPORATION,

DEFENDANTS.

JURY DEMANDED

ORIGINAL COMPLAINT

Carnival Corporation d/b/a Carnival Cruise Line (“CCL”) offered cruises it canceled due to COVID-19. CCL offered its customers a “100% REFUND” of “WHAT [THE CUSTOMER(S)] PAID]” (“100% Refund Offer”).

Gary Lancaster (“Lancaster”) had booked a cruise that CCL canceled. He accepted CCL’s 100% Refund Offer. After Lancaster accepted CCL’s 100% Refund Offer, CCL reneged and refunded to Lancaster less than 100% of what Lancaster he paid. Because Lancaster believes that many others have suffered the same fate, he, individually and for a national class, sues CCL for breach of contract.¹



JURISDICTION AND VENUE

1. This Court has original jurisdiction over the subject of this action under 28 U.S.C. §1332(d)(2)(A) because this case is brought as a class action where the aggregate of the class is over \$5,000,000, exclusive of interest and costs, and most members of the

¹ See, e.g., https://www.consumeraffairs.com/travel/carnival_cruise_lines.htm.

proposed nationwide Class are citizens of states other than Texas. See, Class Action Fairness Act (“CAFA”), 28 U.S.C. §§ 1332 and 1711.

2. This Court has original jurisdiction over CCL because Lancaster is a citizen of a Texas and CCL is a citizen or subject of a foreign state. 28 U.S.C. § 1332(d)(2)(C).

3. Venue is proper in this district under 28 U.S.C. §1391(b) because CCL has agents and transacts business here. The venue is also proper because a substantial part of the events or omissions causing the claim occurred in this district.

PARTIES

4. Gary Lancaster (“Lancaster”) is a citizen and resident of the State of Texas and resides in Cypress, Texas. Lancaster purchased a cruise offered by CCL on February 28, 2020.

5. Carnival Corporation d/b/a “Carnival Cruise Lines” (“CCL”) is a Republic of Panama corporation that claims its principal place of business is the “HIGH SEAS” and its principal office is 3655 N.W. 87th Avenue, Miami, FL 33178-2428 USA. CCL is registered to do business in Texas and may be served at Nation Registered Agents, Inc., 1999 Bryan St., Ste. 900, Dallas, TX 75201-3136 USA.

FACTS

6. CCL offers a variety of cruises to the public, providing passage for over 12.3 million passengers in 2019. Some of the offered cruises embark in Galveston, Texas.

7. On February 28, 2010, Lancaster accepted an offer by CCL and booked a seven-day family Carnival cruise through the western Caribbean. The proposed embarkation site and date are, respectively, Galveston, Texas on June 6, 2020.

Lancaster made his first payment for the cruise on February 28, 2010 and his final payment on March 8, 2020.

8. By March 8, 2020, Lancaster had paid CCL \$7306.56 for his family cruise.

Before Lancaster made his final payment, CCL appreciated that the COVID-19 pandemic effectively ended its 2020 Summer cruises.

9. On April 13, 2020, Lancaster received this email from CCL:

**WE'VE HAD TO CANCEL YOUR CRUISE.
BUT WE DO HAVE OPTIONS FOR YOU.**

ALL NORTH AMERICAN ITINERARIES DEPARTING MAY 12 THROUGH
JUNE 26, 2020

All CARNIVAL SUNRISE NEW YORK 2020 ITINERARIES

Dear Guest,

* * *

As we have offered previously, we are providing two options for you, including a bonus value incentive package that has proven very popular with our guests. We hope you will be able to rebook your vacation utilizing the incentives we have developed in recognition of your loyalty.

We have fully automated your ability to respond with your choice online, avoiding the need to call us. We urge you to carefully review this information and follow the online process. Like many other companies, our offices remain closed at the direction of local government. While our customer contact center team is now working from home and taking calls, technology limitations continue to impact productivity and our level of support. This announcement is also likely to continue the extremely high call volumes that limit our traditional levels of resources and responsiveness. Calling us will not expedite your request at this time. In addition, if you booked through a travel advisor, they are fully equipped to help you with this process and will also be able to rebook another vacation with your future cruise credit.

This letter supersedes any previous offer received. Carnival will honor this offer for any guests who were previously booked on these voyages and cancelled their booking on or after March 6, 2020.

CURRENT CRUISE LENGTH	OPTION 1: ENHANCED VALUE	OPTION 2: WHAT YOU PAID
6+ DAYS	<ul style="list-style-type: none"> • 100% FUTURE CRUISE CREDIT* • US\$600 ONBOARD CREDIT PER STATEROOM on next cruise if booked by 12/31/20 for a sailing departing by 12/31/22* 	<ul style="list-style-type: none"> • 100% REFUND
5 DAYS OR LESS	<ul style="list-style-type: none"> • 100% FUTURE CRUISE CREDIT* • US\$300 ONBOARD CREDIT PER STATEROOM on next cruise if booked by 12/31/20 for a sailing departing by 12/31/22* 	<ul style="list-style-type: none"> • 100% REFUND

Please make your selection using our online tool [here](#) - there is no need to call.

Please note that whichever option you select will apply to all guests on your reservation.

Given how fluid the situation is, we have extended this offer until December 31, 2020 for you to make a selection. After that, you will automatically receive a Future Cruise Credit*.

Regardless of the option you choose, your taxes, fees and port expenses, Carnival Vacation Protection, prepaid gratuities, pre-purchased Carnival shore excursions, beverage and Wi-Fi packages, and Fun Shop purchases will be automatically refunded to the original form of payment.²

10. So, CCL “had to cancel [the Lancaster’s family] cruise.” CCL made a new offer – an offer that, when accepted, would apply to all guests on Lancaster’s reservation:

- a. Option 1: “rebook his vacation utilizing the incentives [CCL] ha[s] developed”; or
- b. Option 2: receive “100% REFUND” of “WHAT [HE] PAID” to CCL.

11. Lancaster received CCL’s offer in Harris County, Texas. And, from Harris County, Texas, Lancaster, on his and his family’s behalf, immediately accepted Carnival’s “supersed[ing]” 100% Refund Offer by clicking on the “[here](#)” hyperlink and confirming his acceptance of CCL’s 100% Refund Offer – whereby Lancaster was to receive “100% REFUND” of “WHAT [HE] PAID.”

²

Exhibit A.

12. Upon accepting Option 2 – CCL’s 100% Refund Offer, CCL could have promptly returned Lancaster his \$7306.56 – 100% of what he paid.

13. On April 17, 2020 CCL again wrote Lancaster. Here, CCL stated: “We are sorry that your reservation has canceled” (emphasis added).³ Note that, now, CCL now structures its words to render the “cancellation” passive. This is a far cry from “WE’VE [CCL] HAD TO CANCEL YOUR CRUISE.”

14. CCL continues, “If your cancellation occurred during [the] penalty period the amount will be listed below[.]” Carnival states a “Penalty Assessed” totaling \$1954.50, some from each member of Lancaster’s family on his reservation other than Lancaster himself. Carnival did not explain its \$1954.50 “Penalty Assessed.”

15. CCL was clear that it did not intend to answer questions about or related to its assessed penalties (“Please note this unprecedented situation is delaying our processing times so calling/emailing us will not expedite the process.”). CCL understood that Lancaster, having accepted CCL’s 100% Refund Offer, demanded his refund.

16. On July 31, 2020, Lancaster received a refund of \$5352.06 – precisely \$1914.50 less than the 100% refund Lancaster contracted with Carnival to receive by selecting Option 2 in CCL’s offer, accepting CCL’s 100% Refund Offer.

17. The only agreement between Lancaster and CCL is the 100% Refund Offer. Lancaster gave up any of his prior rights in return for CCL’s promise to give him a 100% refund.

18. Lancaster has been damaged by \$1914.50. CCL harmed all other individuals that accepted CCL’s 100% Refund Offer (Option 2) by refunding less than 100% of the amount paid. Lancaster alleges the total damages to be over \$5,000,000.

³

Exhibit B.

CLASS ACTION ALLEGATIONS

19. Lancaster asks this Court to maintain this case as a nationwide class action under FED. R. CIV. P. 23(a) and 23(b).

20. Lancaster proposes a “100% Refund Class” or “Class” preliminarily defined as “All persons who purchased a cruise from CCL, accepted CCL’s 100% Refund Offer but received less.” Excluded from the Class are Defendants, Defendants’ officers and directors, those persons’ immediate families, and the successors and predecessors of any such excluded person or entity.

21. The 100% Refund Class is reasonably estimated to be in the tens of thousands and is, thus, so numerous that joinder of all its members is impracticable. The identity of each class member can be determined both by the class members and CCL, each from financial records. Class members may be notified of the pendency of this lawsuit by email – a customary manner in which CCL communicates with cruise purchasers -- using CCL’s records.

22. The members of the 100% Refund Class share a unity of interest in questions of law and fact about CCL’s 100% Refund Offer. Common questions of law and fact predominate over individual questions affecting the Class, including, but not limited to:

- a. whether CCL’s 100% Refund Offer, once accepted, superseded any previous offer received from CCL and became a contract;
- b. whether CCL breached its contractual obligations by failing to return 100% of what each class member paid;
- c. whether CCL breached its contractual obligations by assessing a penalty; and
- d. the appropriate type and measure of damages.

23. Lancaster's claims are typical of absent class members. If brought and prosecuted individually, the claims of each class member would require proof of many of the same material and substantive facts, rely upon the same remedial theories and seek the same relief.

24. Lancaster will fairly and adequately protect the interests of the Class. He has no interests adverse to or that directly and irrevocably conflict with the interests of other class members.

25. Lancaster is willing and prepared to serve this Court and the Class in a representative capacity with all attendant obligations and duties.

26. Lancaster has retained the services of counsel experienced in class action litigation. Lancaster's counsel will adequately prosecute this action.

27. Class certification is appropriate under FED. R. CIV. P. 23(b)(1), in that the prosecution of separate actions by individual class members would create a risk of inconsistent or varying adjudications, which would establish incompatible standards of conduct for CCL. Such incompatible standards of conduct and varying adjudications on the same essential facts, proof and legal theories would also create and permit the existence of inconsistent and incompatible rights within the Class.

28. Class certification is appropriate under FED. R. CIV. P. 23(b)(3), in that common questions of law and fact predominate over questions affecting only individual class members.

29. A class action is superior to other methods for the fair and efficient adjudication of the controversies raised because:

- a. individual claims by the class members would be impracticable as the costs of pursuit would far exceed what any one class member has at stake;

- b. little, if any, individual litigation has been commenced over the matter alleged in this Complaint, and individual class members are unlikely to have an interest in separately prosecuting and controlling individual actions;
- c. the concentration of litigation of these claims in one forum will achieve efficiency and promote judicial economy; and
- d. the proposed class action is manageable.

COUNT I
Breach of Contract

- 30. Lancaster incorporates the allegations in all preceding paragraphs.
- 31. Lancaster brings this claim individually and on behalf of the Class.
- 32. On April 13, 2020, CCL offered a new and straightforward contract ("100% Refund Offer") that (a) superseded all prior offers (and thus agreements) with Lancaster and each Class Member and (b) offered to refund Lancaster and each Class Member 100% of what each paid to CCL.
- 33. Lancaster and each Class member accepted CCL's 100% Refund Offer by tendering her or his demand that CCL comply with Option 2 – CCL's 100% Refund Offer.
- 34. CCL did not refund Lancaster 100% of the money that Lancaster paid to CCL. Lancaster has every reason to believe that others have been treated the same.
- 35. All conditions precedent to the liability or obligations of CCL have occurred or have been waived.
- 36. Lancaster and each Class member have suffered an injury.

PRAYER

Lancaster respectfully asks this Court to

- a. determine this action should be maintained as a class action under FED. R. Civ. P. 23 and name Lancaster as the Class's representative and his attorneys as the Class's counsel;

- b. declare that CCL violated its 100% Refund Offer contract by not refunding 100% of the amount paid;
- c. award damages to the Class in the sum paid less any amount that CCL refunded before this suit;
- d. award prejudgment and post-judgment interest on the damages; and
- e. award reasonable attorneys' fees, expenses and costs.

DEMAND FOR JURY TRIAL

Lancaster demands a trial by jury.

Respectfully submitted,

/s/ Scott M. Clearman
Scott M. Clearman

Scott M. Clearman
Texas Bar No. 04350090
Email: scott@clearmanlaw.com
Ana E. Kadala
Texas Bar No. 00786007
Email: anita@clearmanlaw.com

THE CLEARMAN LAW FIRM PLLC
2335 Richton St.
Houston, Texas 77098
Telephone: 713-304-9669
Facsimile: 877-519-2800

Exhibit A

Important Information Regarding Your Upcoming Sailing

From: Carnival Cruise Line (funships@carnivalcruiselineemail.com)

To: nrglawyer@yahoo.com

Date: Monday, April 13, 2020, 09:01 AM CDT

To view this email as a web page, go [here](#).

[View Online](#)



WE'VE HAD TO CANCEL YOUR CRUISE. BUT WE DO HAVE OPTIONS FOR YOU.

**ALL NORTH AMERICAN ITINERARIES DEPARTING MAY 12 THROUGH JUNE 26, 2020
ALL CARNIVAL SUNRISE NEW YORK 2020 ITINERARIES**

Dear Guest,

As all of us come together to support the global response to the COVID-19 situation, the cruise industry is extending our pause in operations once again. For Carnival, this means we will resume our North America cruising on June 27, 2020, and as part of this, we are also cancelling Carnival Sunrise's seasonal itineraries out of New York this summer and into the fall.

This is disappointing, but we are committed to being a strong partner with government and taking steps that maintain public confidence in our business. We will use this extended pause to continue to identify and implement additional protocols so that we can safely welcome our guests back on board. Nevertheless, we apologize for disrupting your vacation plans and appreciate your patience as we work through this sudden action.

As we have offered previously, we are providing two options for you, including a bonus value incentive package that has proven very popular with our guests. We hope you will be able to rebook your vacation utilizing the incentives we have developed in recognition of your loyalty.

We have fully automated your ability to respond with your choice online, avoiding the need to call us. We urge you to carefully review this information and follow the online process. Like many other companies, our offices remain closed at the direction of local government. While our customer contact center team is now working from home and taking calls, technology limitations continue to impact productivity and our level of support. This announcement is also likely to continue the extremely high call volumes that limit our traditional levels of resources and responsiveness. Calling us will not expedite your request at this time. In addition, if you booked through a travel advisor, they are fully equipped to help you with this process and will

also be able to rebook another vacation with your future cruise credit.

This letter supersedes any previous offer received. Carnival will honor this offer for any guests who were previously booked on these voyages and cancelled their booking on or after March 6, 2020.

CURRENT CRUISE LENGTH	OPTION 1: ENHANCED VALUE	OPTION 2: WHAT YOU PAID
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Please make your selection using our online tool [here](#) – there is no need to call.

Please note that whichever option you select will apply to all guests on your reservation.

Given how fluid the situation is, we have extended this offer until December 31, 2020 for you to make a selection. After that, you will automatically receive a Future Cruise Credit*.

Regardless of the option you choose, your taxes, fees and port expenses, Carnival Vacation Protection, pre-paid gratuities, pre-purchased Carnival shore excursions, beverage and Wi-Fi packages, and Fun Shop purchases will be automatically refunded to the original form of payment.

If you purchased your own flights for getting to your cruise, we encourage you to contact your airline or travel agent about your options as the airlines are also working to accommodate their passengers.

Please continue to visit the link below to learn more about how we are addressing COVID-19 and get further updates on our operations.

Again, we apologize for this inconvenience because we know how much time and effort you put into planning the perfect cruise vacation. We want to get back to cruising just as soon as we can and we'll be here when times are better and be ready for your return.

Please continue to take care of yourself and your loved ones. Your health and safety are important to us whether or not you're on one of our ships.

We thank you for your patience and support.

Sincerely,

Christine Duffy
President, Carnival Cruise Line

HOW WE'RE PRIORITIZING GUEST SAFETY

[LEARN MORE >](#)



*The Future Cruise Credit (FCC) is based on the cancellation fees retained by Carnival for this voyage, including Fly2Fun air if applicable. FCC and Onboard Credit (OBC) are combinable with all Carnival-offered fares, are non-transferable, non-refundable, cannot be used as a deposit or applied to a chartered sailing, have no cash value, and must be redeemed on a Carnival Cruise Line sailing departing by 12/31/2022. The FCC/OBC may only be used toward one (1) booking in the same currency in which the above voyage was originally paid. FCC cannot be used for taxes, fees & port expenses, Carnival Vacation Protection, onboard charges or gratuities and any unused portion will be forfeited. New OBC offer replaces any previous OBC offer and applies to new booking if made by 12/31/20. The booking guest shall be responsible for payment of the difference between the amount of the FCC and the amount of the new booking if higher. After you have booked your cruise, please use this [link](#) to provide us with the new booking information so we can process your FCC.

[Contact Us](#) • [About Us](#) • [Privacy Notice](#) • [Unsubscribe](#)

Exhibit B



CANCELLATION LETTER

4/17/2020

ATTN: GARY

GARY LANCASTER

CYPRESS TX US

RE:

Booking#: G14CP9

Dear Guest/Travel Partner,

We are sorry that your reservation has cancelled. If your cancellation occurred during penalty period the amount will be listed below:

BookingRef: G14CP9
 CARNIVAL VISTA
 06/06/2020

Guest Names	Cancellation Date	Penalty Assessed
GARY LANCASTER	04/17/2020	USD 0.00
BRIDGET LANCASTER	04/17/2020	USD 1211.50
LANCASTER	04/17/2020	USD 390.50
LANCASTER	04/17/2020	USD 352.50

A refund of the government fees and taxes will be processed to the original form of payment. Please note this unprecedented situation is delaying our processing times so calling/emailing us will not expedite the process. We appreciate your patience.

We hope you will once again consider Carnival when making future vacation plans.

Sincerely,

Carnival Cruise Line